

REMARKS

Claims 1, 2-22, and 24-32 remain pending in this application. Claims 1, 13, 18, 19, 21, 25, 26, 27, 29 and 32 are independent. Claims 1, 13, 18, 19, 21, 26, 27, 29 and 32 have been amended, and no claims have been added or canceled by this Amendment.

No new matter is involved with any claim amendment, as support may be found throughout the originally-filed disclosure.

Indefiniteness Rejection

Withdrawal of the rejection of claim 13 under 35 U.S.C. §112, second paragraph, as being indefinite, is requested. Claim 13 has been amended in a manner that is believed to overcome the stated basis for rejection. Consideration and allowance of amended claim 13 is respectfully requested.

Anticipation Rejection by McGowan

Withdrawal of the rejection of claims 21, 22, 24, 29, 30 and 31 under 35 U.S.C. §102(e) as allegedly being anticipated by McGowan et al. (US 6,628,954) ("McGowan") is requested.

Applicants note that anticipation requires the disclosure, in a prior art reference, of each and every limitation as set forth in the claims.¹ There must be no difference between the claimed invention and reference disclosure for an anticipation rejection under 35 U.S.C. §102.² To properly anticipate a claim, the reference must teach every element of the claim.³ "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference".⁴ "The identical invention must be shown in as complete detail as is contained in the...claim."⁵ In determining anticipation, no claim

¹ *Titanium Metals Corp. v. Banner*, 227 USPQ 773 (Fed. Cir. 1985).

² *Scripps Clinic and Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001 (Fed. Cir. 1991).

³ See MPEP § 2131.

⁴ *Verdegaal Bros. v. Union Oil Co. of Calif.*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

⁵ *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

limitation may be ignored.⁶ In view of the foregoing authority, the cited reference fails to anticipate independent claim 1, as amended.

Discussion of Applicant's Disclosure

By way of background, one or more embodiments and aspects of Applicant's disclosure are directed to a method, system, and network node to determine services accessible via a subscription in a communication system. In order to provide access to certain services, even when the subscription having an account with a predetermined limit cannot be used for services to be charged from the subscription, at least two sets of services are defined for the subscription. One set of services is used when the predetermined limit is not reached, and the other is used when the predetermined limit has been reached. In one embodiment, the latter set of services comprises services free of charge. Access point names (APN) may be used to identify available services.

Discussion of McGowan

According to its Abstract, McGowan is purportedly directed to a system, method, and program for controlling access to data services by a subscriber unit in a wireless network in which the method and system for accessing wireless data services in which messaging is reduced, and roaming subscribers are enabled to access data services. McGowan's wireless communication system purportedly includes at least a service control point and a gateway system (*e.g.*, a Gateway Generalized Packet Radio Service Serving Node (GGSN)) that is coupled to a data network. To obtain access to data services, a wireless subscriber unit establishes communication with a gateway system and requests data services from the gateway system. In response to the request, the gateway system queries the service control point regarding authorized data services for the subscriber unit. If the gateway system receives a negative reply from the service control point, then the gateway system denies access to the data services by the subscriber Unit. However, if the gateway system receives a positive reply from the service control point, then the gateway system enables access to the data services by the subscriber unit.

⁶ *Pac-Tex, Inc. v. Amerace Corp.*, 14 USPQ2d 187 (Fed. Cir. 1990).

In a preferred embodiment, the gateway system tracks the requested data services utilizing pre-defined resource units. In one embodiment, the gateway system tracks service utilization by periodically querying and receiving a reply from the service control point after each pre-defined resource unit has been utilized. In this embodiment, the service control point updates an account balance of remaining resource units in response to receiving the queries and informs the gateway system when data access should be denied.

McGowan teaches that an APN is selected first, and after that the balance is checked if the APN relates to prepaid services. This is contrary to Applicants' disclosed and claimed approach in which the balance is checked before the APN is selected, and the outcome of the checking is used to select the APN.

With respect to the Examiner's suggestion that another APN can be selected if there is no balance, this would lead to an inappropriate solution in which the user would receive information that the requested prepaid services are not available, and no connection is made. After that, the user may try another service for which a connection may be established. Therefore, such a modified solution would still not teach or suggest comparing the balance and, after that, selecting from at least two APN's to be used for the connection in response to a comparison.

Specific Deficiencies of McGowan

McGowan fails to disclose, teach, or suggest to modify the stored access point name ("APN") for connection of the subscription. Further, McGowan is deficient in providing any suggestion that, after modifying the stored APN, services would be provided using the modified APN. Particular deficiencies with respect to the recitations of independent claims 21 and 29 are identified below.

The amendments to independent claims 21 and 29 find support at least at paragraph [0044], where HLR causes the PDP context modification in SGSN.

Independent Claim 21

McGowan does not disclose a network node in a communication system providing a subscription, wherein, *inter alia*, the network node is arranged to store *a first access point name*

used in the communication system to define where and how to connect to the user of the subscription; provide access to a first set of services via a connection accessible to the subscription using the first access point name; receive from the communication system an indication indicating the use of a second set of services for the connection, the indication of the set of services being received as a second access point name and in response to receiving the indication to modify the stored first access point name with the received second access point name, and provide access only to services included in the indicated second set of services using the second access point name," as recited in independent claim 21, as amended (*emphasis added*).

Independent Claim 29

Further, McGowan does not disclose a processor comprising program code that configures a network element in a communication system to, *inter alia*, "...*store a first access point name used in the communication system to define where and how to connect the user of the subscription; provide access to a first set of services accessible via a connection to the subscription using the first access point name; receive from the communication system an indication indicating the use of a second set of services for the connection and the indication of the set of services being received as a second access point name used in the communication system to define where and how to connect the user of the subscription; and, in response to receiving the indication, to modify the stored first access point name with the received second access point name, and provide access only to services included in the indicated second set of services using the second access point name,*" as recited in independent claim 29, as amended (*emphasis added*).

Accordingly, since the applied art does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 21 and 29 are respectfully requested. In addition, dependent claims 22, 24, 30, and 31 variously and ultimately depend from these patentable independent claims, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

Unpatentability Rejection over McGowan

Withdrawal of the rejection of claims 1, 4-10, 13, 14, 17-20, 25-28 and 32 under 35 U.S.C. §103(a) as allegedly being unpatentable over McGowan (US 6,628,954) is requested. The examiner has failed to make a *prima facie* case of unpatentability. McGowan has been discussed above.

At the outset, Applicant notes that, to establish a *prima facie* case of obviousness, three basic criteria offer useful insights. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations.⁷ Further, the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure.⁸ The Supreme Court recently held that it is necessary, *inter alia*, for a court to look to interrelated teachings of multiple patents in order to determine whether there was an apparent reason to combine the known elements in the claimed. In this regard, the Court held "[t]o facilitate review, this analysis should be made explicit."⁹ "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."¹⁰

Specific Deficiencies of McGowan

As mentioned above, McGowan teaches that an APN is selected first, and after that the balance is checked if the APN relates to prepaid services. This is contrary to Applicants' disclosed and claimed approach in which the balance is checked before the APN is selected, and the outcome of the checking is used to select the APN. Particular deficiencies with respect to the recitations of independent claims 1, 13, 18, 19, 25-27, and 32 are identified below.

The amendments to independent claims 1, 13, 18, 19, 25-27, and 32 have been made solely to clarify the recitations, and no new matter is involved.

⁷ See MPEP §2143.

⁸ *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) and See MPEP §2143.

⁹ *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. ____ (2007) (see p. 14).

¹⁰ See *Id.*, citing *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Independent Claim 1

McGowan, either alone or in combination, does not disclose, teach or suggest a method that includes, *inter alia*, "...using in the communication system access point names to define where and how to connect the user of the subscription; defining a first access point name for the first set of services; defining a second access point name for the second set of services; comparing the balance of the account with the first limit; ***selecting, in response to the result of the comparison, an access point name to be used with this connection, wherein the first access point name is selected when the balance of the account does not reach the first limit; and the second access point name is selected when the balance reaches the first limit,***" as recited in independent claim 1, as amended (*emphasis added*).

Independent Claim 13

Further, the applied art, either alone or in combination, does not disclose, teach or suggest a communication system providing a subscription with an account and at least a first limit, wherein the communication system includes, *inter alia*, "...the communication system comprises memory ***for storing definitions of at least a first set of services associated with a first access point name and a second set of services associated with a second access point name to be used with the subscription,*** each set of services defining services accessible via the subscription; and the communication system is arranged to...select, in response to the result of the comparison, an access point name to be used with this connection wherein, the first access point name is selected when the balance of the account does not reach the first limit and the second access point name is selected when the balance reaches the first limit," as recited in independent claim 13, as amended (*emphasis added*).

Independent Claim 18

In addition, the applied art, either alone or in combination, does not disclose, teach or suggest a network node in a communication system providing a subscription with an account and at least a first limit, the ***network node being arranged to use access point names to define where and how to connect the user of the subscription and monitor the balance of the account,*** wherein the network node is further arranged, *inter alia*, "***to associate a first access point name***

with a first set of services, and a second access point name with a second set of services, both sets of services defining services accessible via the subscription; compare the balance of the account with the first limit; select, in response to the result of the comparison, an access point name to be used with this connection, wherein the first access point name is selected when the balance of the account does not reach the first limit and the second access point name is selected when the balance reaches the first limit," as recited in independent claim 18, as amended (*emphasis added*).

Independent Claim 19

Furthermore, the applied art, either alone or in combination, does not disclose, teach or suggest a network node in a communication system providing a subscription with an account and at least a first limit, the network node being arranged to monitor the balance of the account, wherein, the network node is arranged, *inter alia*, "*to associate a first access point name with a first set of services and a second access point name with the second set of services, both sets of services accessible via the subscription; communicate with a second network node; compare the balance of the account with the first limit; select in response to the result of the comparison, an access point name to be used with this connection, wherein the first access point name is selected when the balance of the account does not reach the first limit the second access point name is selected when the balance reaches the first limit, and indicate to the second network node the selected access point name,*" as recited in independent claim 19, as amended (*emphasis added*).

Independent Claim 25

Still further, the applied art, either alone or in combination, does not disclose, teach or suggest a method of determining services accessible via a subscription having an account and at least a predetermined first limit in a communication system, wherein the method includes, *inter alia*, "*maintaining definitions of at least a first set of services and a second set of services to be used with the subscription, each set of services defining services accessible via the subscription, the second set of services being a subset of the first set of services and comprising services which are not charged from the subscriber; comparing, during connection activation, the balance of the account with the first limit; deciding, during connection activation and on the*

basis of the comparison, which set of services, among said at least the first set of services and the second set of services, can be used; using the first set of services when the balance of the account does not reach the first limit; and using the second set of services when the balance reaches the first limit," as recited in previously-presented independent claim 25 (*emphasis added*).

Independent Claim 26

Also, the applied art, either alone or in combination, does not disclose, teach or suggest a processor comprising program code that configures a network element in a communication system to, *inter alia*, "*use access point names to define where and how to connect the user of the subscription...associate a first access point name with a first set of services, and a second access point name with a second set of services*, both sets of services defining services accessible via the subscription...compare the balance with the first limit; *select, in response to the result of the comparison, an access point name to be used with this connection in response to the result of the comparison, wherein the first access point name is selected when the balance of the account does not reach the first limit and the second access point name is selected when the balance reaches the first limit,*" as recited in independent claim 26, as amended (*emphasis added*).

Independent Claim 27

In addition, the applied art, either alone or in combination, does not disclose, teach or suggest a processor comprising program code configuring a network element in a communication system to, *inter alia*, "*use access point names to define where and how to connect the user of the subscription...associate a first access point name with a first set of services, and a second access point name with a second set of services*, both sets of services defining services accessible via the subscription...compare the balance with the first limit; *select, in response to the result of the comparison, an access point name to be used with this connection wherein the first access point name when the balance of the account does not reach the first limit and the second access point name is selected when the balance reaches the first limit; and indicate, in a form of the selected access point name to the second network node, which set of services from among at least two different sets of services defined for the*

subscription is the allowed set of services on the basis of said comparison," as recited in independent claim 27, as amended (*emphasis* added).

Independent Claim 32

In addition, the applied art, either alone or in combination, does not disclose, teach or suggest a computer readable medium encoding a computer program of instructions for executing a computer process for determining services accessible via a subscription having an account and at least a first limit in a communication system, wherein the computer process includes, *inter alia*, "*...using in the communication system access point names to define where and how to connect the user of the subscription; defining a first access point name for the first set of services; defining a second access point name for the second set of services...comparing the balance of the account with the first limit; selecting, in response to the result of the comparison, an access point name to be used with this connection, wherein the first access point name is selected when the balance of the account does not reach the first limit; and the second access point name is selected when the balance reaches the first limit,*" as recited in independent claim 32, as amended (*emphasis* added)..

Accordingly, since the applied art does not teach or suggest all the claimed limitations, reconsideration and allowance of independent claims 1, 13, 18, 19, 25-27, and 32 are respectfully requested. In addition, dependent claims 3-12, 14-17, 20, and 28 variously and ultimately depend from these patentable independent claims, and are submitted as being allowable at least on that basis, without further recourse to the patentable features recited therein.

Unpatentability Rejection over McGowan in view of Sjodin

Withdrawal of the rejection of claim 3 under 35 U.S.C. §103(a) as allegedly being unpatentable over McGowan (US 6,628,954), as applied to claim 1, in view of Sjodin is requested. The examiner has failed to make a *prima facie* case of unpatentability. The legal requirements for unpatentability have been discussed above.

Discussion of Sjodin and its Deficiencies

According to its Abstract, Sjodin is purportedly directed to a signaling channel firewall for communications between wireless networks in which selective isolation between a microcellular communication network and a signaling channel of a macrocellular communication network that is relatively larger than the microcellular network is achieved by receiving communication signals from the microcellular network, and using a communications protocol stack to translate the communication signals into further signals for transmission over the signaling channel. Some of the communications signals are translated into the further signals, but some of the communications signals are selectively denied translation into the further signals.

The Examiner admits that McGowan does not teach or suggest use of a firewall, and asserts that Sjodin provides this missing limitation and is appropriately combinable with McGowan.

Whether or not this is true, Sjodin does not make up for the previously-identified deficiencies of McGowan, discussed above with respect to the unpatentability rejection of independent claim 1, from which claim 3 directly depends.

Accordingly, since the applied art does not teach or suggest all the claimed limitations at least of amended independent claim 1 from which claim 3 depends, consideration and allowance of dependent claim 3 are respectfully requested.

Unpatentability Rejection over McGowan in view of Hartmaier

Withdrawal of the rejection of claims 11 and 12 under 35 U.S.C. §103(a) as allegedly being unpatentable over McGowan (US 6,628,954), as applied to claim 1, in view of Hartmaier is requested. The legal requirements of unpatentability have been provided above.

Discussion of Hartmaier and its Deficiencies

According to its Abstract, Hartmaier is purportedly directed to a signaling system and method for network-based pre-paid wireless telephone service which monitors a subscriber's call, deducts the cost of the call from the subscriber's pre-paid account in real-time, warns the subscriber during a call when the account is nearing depletion, and terminates the call when the

account is depleted. The system can also prevent the initiation of a new call when the account is depleted. Various options can also apply different charging rates, can charge only when specified criteria are met, or can charge only for calls to/from specified areas or telephone numbers. The system and method uses signaling techniques that will allow the metering or billing of the call, along with any authorization or restrictions, to be done remotely from the actual switching of the call. Call events or chargeable events are transmitted to the pre-paid control system while the communications path of the call is held at the switching system awaiting control information. The identity of the pre-paid service subscriber is established using existing devices that currently are used to authenticate the user. The wireless phone user does not have to enter any additional codes or identification to obtain -access to the pre-paid service.

The Examiner admits that McGowan does not teach or suggest that at least the second set of services comprises a deposition service, further asserts that Hartmaier provides the missing limitations of claims 11 and 12, and is appropriately combinable with McGowan.

Whether or not this is true, Hartmaier does not make up for the previously-identified deficiencies of McGowan, discussed above with respect to the unpatentability rejection of independent claim 1, from which claims 11 and 12 ultimately depend.

Accordingly, since the applied art does not teach or suggest all the claimed limitations at least of amended independent claim 1 from which claims 11 and 12 depend, consideration and allowance of dependent claims 11 and 12 are respectfully requested.

Unpatentability Rejection over McGowan in view of Hartmaier

Withdrawal of the rejection of claims 15 and 16 under 35 U.S.C. §103(a) as allegedly being unpatentable over McGowan (US 6,628,954), as applied to claim 13, in view of Hartmaier is requested. Both a discussion of Hartmaier and the legal requirements of unpatentability have been provided above.

Discussion of Hartmaier and its Deficiencies

The Examiner admits, *inter alia*, that McGowan does not teach or suggest that the first node is arranged to perform the comparison and, in response to the balance reaching the first limit, to

direct the second node to set the second set of services as the allowed set of services..., and further asserts that Hartmaier provides the missing limitations of claims 15 and 15, and is appropriately combinable with McGowan.

Whether or not this is true, Hartmaier does not make up for the previously-identified deficiencies of McGowan, discussed above with respect to the unpatentability rejection of independent claim 13, from which claims 15 and 16 ultimately depend.

Accordingly, since the applied art does not teach or suggest all the claimed limitations at least of amended independent claim 13 from which claims 15 and 16 depend, consideration and allowance of dependent claims 15 and 16 are respectfully requested.

Conclusion

All rejections having been addressed, Applicant submits that each of pending claims 1, 2-22, and 24-32 in the present application is in immediate condition for allowance. An early indication of the same would be appreciated.

In the event the Examiner believes that an interview would be helpful in resolving any outstanding issues in this case, the Undersigned Attorney is available at the telephone number indicated below.

For any fees that are due, including fees for extensions of time, please charge Deposit Account Number 03-3975 from which the Undersigned Attorney is authorized to draw. The Commissioner for Patents is also authorized to credit any over payments to the above-referenced Deposit Account.

Due Date: January 15, 2008

Respectfully submitted,

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Attachment: Petition for 1-month Extension of Time